

SEXUAL AND REPRODUCTIVE HEALTH RIGHTS AND SEXUAL HARASSMENT IN EDUCATION

A research report by:

Amy-Leigh Payne, Charlene Kreuser, Boatemaa Agyeman-Mensah,
Kiren Rutsch, Nokuthula Mbele, Aaron Tifflin





We would like to acknowledge the Canada Fund for Local Initiatives (CFLI) for their generous support.

Contents

- 04 Definitions
- 05 Introduction
- 06 Importance of Education on SRHR and Protection from GBV and Sexual Violence for Girl Learners
- 08 National Integrated Sexual & Reproductive Health and Rights Policy
- 09 Policy on the Prevention and Management of Learner Pregnancy in School
- 10 National Policy on HIV, STI's and TB
- 12 Comprehensive Sexuality Education
- 16 Shortcomings of CSE Curriculum
- 17 Recommendations and Conclusion
- 18 Get in Touch

DEFINITIONS

Sexual and reproductive health rights

Comprises of sexual health and sexual rights, as well as reproductive health and reproductive rights (SRHR). SRHR refers to those rights that allow people to make informed and meaningful decisions about their own sexual well-being, such as their sexual orientation, relationships, sexual activity, family planning or their bodies. ¹

SRHR is based on the rights of all persons to:

- have their bodily integrity, privacy, and personal autonomy respected;
- freely define their own sexuality, including sexual orientation and gender identity and expression;
- decide whether and when to be sexually active;
- choose their sexual partners;
- have safe and pleasurable sexual experiences;
- decide whether, when, and whom to marry;
- decide whether, when, and by what means to have a child or children, and how many children to have;
- have access over their lifetimes to the information, resources, services, and support necessary to achieve all the above, free from discrimination, coercion, exploitation, and violence. ²

Gender-based violence

Any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life. Sexual harassment and sexual violence are examples of gender-based violence (GBV). ³

Sexual harassment

Unwanted physical, verbal or non-verbal conduct of a sexual nature that makes the survivor feel uncomfortable. ⁴

Sexual violence

Any sexual act or attempted sexual act using intimidation, threats, force, harassment or emotional abuse. ⁵

Introduction

The South African government has made important efforts toward fulfilling the right to education for every woman and girl in South Africa.

However, poor access to sexual and reproductive health rights (SRHR) information and services negatively impacts girls' access to schooling and educational outcomes. We continue to see an increase in dropout rates and absenteeism amongst adolescent girls.

- 01 Between April 2021 and March 2022, the Department of Health (DOH) recorded more than 90 000 deliveries to girls aged 10-19 years. KwaZulu Natal accounted for almost 30% of these pregnancies.⁶ For many black South Africans living in poor rural and urban communities, teenage pregnancy is a risk factor, accounting for a third of girl learner dropout.⁷ These statistics illustrate the importance of sexual and reproductive rights education for reducing learner pregnancy rates, absenteeism, and school dropout.
- 02 Beyond the impact of inadequate SRHR information and services, sexual misconduct against girls has wide-ranging consequences for girl learners' physical and psychological wellbeing, school performance and attendance. Schools are one of the places learners are most vulnerable. It is, therefore, important that learners be protected from any forms of abuse, including sexual violence and sexual harassment.
- 03 Although Comprehensive Sexuality Education (CSE) was introduced by the Department of Basic Education (DBE) in 2000, as of 2021, the government has only piloted scripted lesson plans in select schools in four provinces and not nationally. Considering the prevalence of teenage pregnancies and the risk factors associated with it and sexual misconduct, there is a concern that the Life Orientation curriculum up to Grade 12 and Life Sciences curriculum up to Grade 9 (after which it becomes an optional subject) is not adequate which tends to support a call for a national rollout of the CSE scripted lesson plans.

1 'Sexual and Reproductive Health Rights' available at: <https://www.youthdoit.org/themes/sexual-and-reproductive-healthand-rights-are-human-rights/>.

2 A M Starrs et al 'Accelerate progress – sexual and reproductive health rights for all: Report of the Guttmacher-Lancet Commission' (2018) 391 The Lancet 2646.

3 Declaration on the Elimination of Violence Against Women (20 December 1993) A/RES/48/104.

4 K Paterson & T Poole 'Sexual Violence in Schools' in Section27 (ed) Basic Education Rights Handbook (2019).

5 K Ozah & D Petherbridge 'Learner Pregnancy' in Section27 (ed) Basic Education Rights Handbook (2019).

6 'Question NW2189 to the Minister of Basic Education' available at: <https://pmg.org.za/committee-question/19416/>.

7 See, in general: Statistics South Africa 'General Household Survey (GHS)' (2015-2021).



Importance of Education on **SRHR and Protection from** **GBV and Sexual Violence** **for Girl Learners**



SRHR should be situated within the broader context of sustainable development.

Inadequate access to SRHR services has far-reaching consequences for progress on gender equality, women's well-being, and the health of new-borns, children, adolescents, and mothers. It also affects women's ability to reach their potential. ⁸

SRHR education is part of the essential package of SRHR services that should be available to all persons. Other services include contraceptive services; prevention and treatment of HIV and sexually transmissible infections (STIs); prevention, detection, and counselling for GBV; safe abortion care; and maternal and new-born care. ⁹

It is generally understood that SRHR education can reduce incidences of unprotected sex, teenage pregnancies, and the transmission of HIV and other STIs. Moreover, it can mitigate the risks associated with unintended pregnancies, including maternal mortality, and encourage the use of contraceptives. ¹⁰

The Constitution of the Republic of South Africa, 1996 (Constitution), guarantees numerous rights that lies at the heart of SRHR. Our main focus is on the right to education and the right to health. Section 27(1) of the Constitution provides that "[e]veryone has the right to have access to health care services, including reproductive healthcare". In turn, Section 29 of the Constitution states that "[e]veryone has the right to a basic education".

The right to education read with the right to health has been broadly interpreted to include:

- Access to school-based or other educational programmes covering all SRHR topics, including reproductive rights, responsible sexual behaviour, prevention of sexually transmitted infections including HIV/AIDS, prevention of teenage pregnancies, family planning, and combatting harmful practices such as female genital mutilation ¹¹;
- The right of pregnant learners to make decisions regarding their pregnancy, including whether to disclose it to staff or learners at the school or not ¹²;
- The right of pregnant learners not to be discriminated against through, for example, suspension or expulsion, not being allowed to return to school after giving birth, only being allowed to return after a specified period, or being refused assistance to catch-up with work missed ¹³;
- The right not to be discriminated against based on actual or perceived HIV or STI status, including the right to privacy and confidentiality in respect hereof ¹⁴;
- Access to health and social services for learners living with HIV and STIs facilitated by the DBE and; ¹⁵
- Access to sanitary products to prevent girl learners from missing school as a result of not having the means to obtain these products themselves. ¹⁶

The National Integrated Sexual & Reproductive Health and Rights Policy (SRHR Policy), Policy on the Prevention and Management of Learner Pregnancy in Schools (Pregnancy Policy), and the National Policy on HIV, STIs and TB (HIV Policy), are all relevant to the current framework that gives effect to the SRHR of learners in schools.

8 Starrs (n 2) at 2642.

9 Ibid at 2643.

10 Ozah (n 5). See also: 'Sex education and other programs that work to prevent teen pregnancy, HIV & sexually transmitted infections' available at: <https://www.advocatesforyouth.org/wp-content/uploads/storage/advfy/documents/sciencesuccess.pdf>.

11 Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (3 August 2011) A/66/254.

12 Ozah (n 5) at 220.

13 Ibid.

14 'National Policy on HIV, STIs and TB for learners, educators, school support staff and officials in all primary and secondary schools in the basic education sector' in GG 41024 of 4 August 2017.

15 Ibid.

16 L Mills & C Howe 'That time of the month: discrimination against girl children who cannot afford sanitary health care' in M Skivenes & KH Sovig (eds) *Child Rights and International Discrimination Law* (2019) at 228.

National Integrated Sexual & Reproductive

Health and Rights Policy

The SRHR Policy was adopted in 2019 by the National DOH, presenting a consolidation of clinical and policy guidelines on SRHR service provision. The Policy relies on the principle that these SRHR services should be available, accessible, acceptable, effective and safe to all individuals, couples, and communities in South Africa.¹⁷

The Policy recognises that social, cultural, and economic factors influence access to and utilisation of SRHR services, which includes SRHR education. Factors include socio-economic status and rural residence, educational attainment, gender norms and entrenched cultural practices, GBV, expectations around fertility, knowledge about conception and contraception, and stigma and discrimination.¹⁸

The SRHR Policy aims to enable individuals to make informed decisions about their sexual and reproductive health in a manner that respects their human rights, increase the quality and uptake of SRHR care and treatment services across all life stages, and ensure access to respectful and non-judgemental SRHR services for priority groups.¹⁹

To this end, the Policy sets out a number of ‘statements’ or goals, with the following touching on SRHR education:

- Creating awareness and improve SRHR knowledge through providing CSE in all schools²⁰;
- Removing barriers to accessing SRHR services through youth-friendly and school-based services including education on the prevention of unwanted pregnancies and risks associated with teenage pregnancy, and the prevention of HIV and other STIs²¹;
- Removing barriers to accessing SRHR services by refraining from moral judgment or discrimination, challenging misperceptions and taboos, and promoting personal choice in decision-making²² and;
- Collaboration between the DOH and DBE on the provision of SRHR services in schools and CSE.²³

The Policy does not go into the detail on how the above should be implemented, instead setting out the broader aims of SRHR service provision in South Africa.

17 'National Integrated Sexual and Reproductive Health and Rights Policy' (2019) at 4.

18 Ibid at 7-8.

19 Ibid at 2.

20 Ibid at 22.

21 Ibid at 29.

22 Ibid at 29.

23 Ibid at 38.



Policy on the Prevention and Management of Learner Pregnancy in School

The Pregnancy Policy was adopted by the DBE in December 2019 against the backdrop of consistently high rates of learner pregnancy and the impact thereof on learners' development, educational attainment, and future potential.²⁴

It sets out the guiding principles, goals, and themes to fulfil its aim of reducing and managing the incidence of learner pregnancy and its adverse impact on affected learners. At its core is the provision of 'quality CSE and access to adolescent and youth-friendly [SRHR] services'.²⁵

The Pregnancy Policy has a four-step implementation plan:

- 01 To provide SRHR services to enable learners to make informed decisions regarding their sexual health, avoid unintended pregnancies, and obtain abortions if chosen.
- 02 To ensure that learners return to school following childbirth.
- 03 To facilitate access to ante-natal care.
- 04 To ensure that pregnant learners are not stigmatised or discriminated against and that those with babies are supported.²⁶

²⁴ 'Policy on the Prevention and Management of Learner Pregnancy in Schools' in GG 45580 of 3 December 2021.

²⁵ Ibid at 18.

²⁶ Ibid at 18.



In implementing the four-step plan, stakeholders (i.e., educators, principals, school-management teams, and learners) should be guided by the following principles: access to education; gender equality; access to comprehensive pregnancy prevention, CSE, and SRHR; counselling, care, and support; addressing stigma and discrimination; respect for dignity, privacy, and confidentiality and reasonable accommodation. ²⁷

The Pregnancy Policy should be implemented across the institutional, national, provincial, and district level with goals and objectives reviewed every five years. ²⁸

National Policy on HIV, STI's and TB

The HIV Policy was adopted in 2017 and sets out the DBEs prioritisation of the prevention of HIV, STIs, and TB amongst learners to promote learner retention and educational attainment. ²⁹

The Policy aims to:

- Coordinate and mainstream the DBE's response to HIV, STIs, TB, and intended pregnancies;
- Implement a comprehensive plan for prevention, treatment, care, and support;
- Provide learners with the information to make informed decisions surrounding safe sex;
- Improve access to prevention, treatment, diagnosis, care, and support services for HIV, STI's, and TB and;
- Increase learner retention in a safe and protective environment. ³⁰



The HIV Policy applies to all learners, educators, school support staff, and officials at all public and private schools from Grade R to Grade 12. It has the same guiding principles as the Pregnancy Policy.³¹

Importantly, the Policy outlines the information that should be provided to learners to empower them to make informed decisions to protect them from HIV, STIs, TB, and unintended pregnancies and refers to the role of CSE as a compulsory subject.

For example, children above the age of 12 should be made aware that they have the right to access SRHR services without parental consent. Learners should also be given comprehensive and scientifically accurate information about HIV, STIs, TB, and pregnancy in a non-judgmental way, including information on contraception, HIV testing, and STI screening and treatment.³²

27 Ibid at 19-21.

28 Ibid at 22.

29 HIV Policy (n 12 above) at 41.

30 Ibid at 45.

31 Ibid at 46-48.

32 Ibid at 50.



Comprehensive Sexuality Education



Comprehensive Sexuality Education (CSE) aims to educate learners on topics such as sexuality and sexual behaviour, with attention to health and safety.

Although the Life Orientation curriculum also covers these topics, CSE offers more in-depth information whilst also remaining child-centred and child-friendly.

CSE has been a part of the South African curriculum in some form since 2000.

More recently, a pilot programme made up of structured lesson plans has been deployed with the intention of strengthening CSE in the current curriculum from grades 4 to 12. This programme is being implemented in provinces with the highest rates of HIV infections, namely, Free State, Gauteng, KwaZulu-Natal, Mpumalanga and Western Cape. Across these provinces there are 1572 schools that are testing the updated curriculum.³³

It is not clear when, or if, the pilot programme will be made compulsory in all schools, but the Minister of Basic Education recently announced that the Department are “intensifying the implementation of CSE in schools”.³⁴

Like Life Orientation, the CSE curriculum runs from Grades 4 through 12 and covers a wide range of issues. The CSE curriculum for Grades 4 to 6 learners aims to impart general knowledge on HIV, STIs, and TB to reduce “risky sexual behaviour among learners”.

→ **There are 10 scripted lesson plans for Grade 4 learners, 6 of which deal with topics related to SRHR.**

These include teaching learners respect for their own and others’ bodies, how culture and religion influences gender roles and individuals’ ideas of themselves, the basics of HIV/AIDS, and an introduction to sexual violence. Of importance in Grade 4 is that learners are taught the definition of respect, body parts and personal space, and identifying the difference between good touch and bad touch. Importantly, learners are taught how to show respect for someone else’s body and what to do if someone does something that does not respect their bodies. The interventions are to teach learners to say “no”, to tell a trusted adult and/or to call Childline.

→ **In Grade 5, there are 3 lessons which directly engage SRHR.**

Firstly, learners are taught that they have a say in what happens to their bodies and what it means to say “no”. This lesson emphasises the right to privacy and agency over one’s body. Secondly, learners are introduced to child abuse and are informed of helpful practices to keep themselves safe from abuse and who to confide in when abused. Finally, building on the sexual violence lesson of Grade 4, learners are taught the definition of violence and its different manifestations, including physical, domestic or sexual violence.

→ **In Grade 6, there is a stronger focus on social concepts.**

As such, only 2 of the 10 lessons touch on themes related to SHRH and GBV. Learners discuss bullying and the relationship with GBV from the perpetrator’s perspective. Here, learners discuss some of the causes of bullying. A connection is also made between bullying and the GBV crisis. Learners also consider gender equality, stereotypes and bias. In this lesson, learners explore gender stereotypes. The Bill of Rights is also included in this insofar as the right to be protected against discrimination is discussed.

33 Question NW1969 to the Minister of Basic Education’ (1 September 2020) available at: <https://pmg.org.za/committee-question/14490/>.

34 ‘Statement by the Minister of Basic Education, Mrs Angie Motshega MP, on the learning losses in the basic education sector since the start of the pandemic’ (29 August 2021) available at: <https://www.education.gov.za/Portals/0/Media/Preess%20Releases/MINISTER%20STATEMENT%20FOR%20MEDIA%20BRIEFING%2029%2008%202021.pdf?ver=2021-08-29-103630-417>.

→ **In the Senior Phase (Grade 7-9) learners are introduced to topics intended to decrease risky sexual behaviour** and to enable learners to make decisions regarding their sexual health.

→ **In Grade 7 there are 3 lessons that speak to the themes of sexual and reproductive health rights, gender-based and sexual violence.**

Learners are taken through what a healthy and unhealthy relationship can look like, what peer pressure is, and how to deal with it in the relationship setting. The difference between healthy and unhealthy behaviour is discussed and learners are taught how to identify abuse. As learners will be going through adolescence, the focus also shifts to bodily and emotional changes and decision-making about sex. Importantly, learners have discussions on gender-based power differences and how to make sexual decisions. Building on this lesson, learners are taught how to identify non-verbal communication and how to differentiate between unclear versus clear messages.

→ **Like in Grade 7, learners have 3 lessons in Grade 8 that deals with SRHR and GBV.**

Following from lessons on healthy and unhealthy relationships in Grade 7, there is a two-part lesson in Grade 8 where learners expand their knowledge on healthy and unhealthy messages about their gender. Learners also discuss how harmful gender messages contribute to social problems such as GBV. As learners start exploring their own identities during adolescence more, the CSE curriculum also creates a space for learners to explore the concepts of "sex" and "sexuality". This lesson touches on the right to express sexual orientation without fear of discrimination. It also details how acceptance of others' sexuality can lead to less stigma and violence. Finally, learners are taught the art of saying "no, thanks" through techniques of refusing sex and refusing sex without a condom. This lesson elaborates on the right to say "no" to sex.

→ **In Grade 9, there is only one lesson pertaining to SRHR, namely sexual consent.**

Learners are educated on what clear and explicit consent is. This involves a discussion on the right to control what happens to one's own body and understanding that sex without consent is rape. Lastly, ambiguity regarding consent is addressed in the context of unhealthy gender norms.

→ **During FET Phase (Grade 10-12), learners are being prepared to make decisions regarding their sexuality and sexual health.**

As with previous phases, the overarching aim is to reduce risky sexual behaviour of learners. Due to the nature of the programme from Grades 10 to 12, there are only a few lessons that speak to SRHR, GBV, and sexual violence.



- **In Grade 10, the focus is on healthier relationships and sexual violence.**
Learners discuss how gender power relations contribute to gender-based violence and explore different aspects of consent. This includes analysing the law concerning young people and their rights insofar as it relates to consent.
- **The scripted lesson plan in Grade 11 directly engages GBV and sexual violence in lessons towards the end of the programme.**
Here, the focus is on fostering an understanding of how risky situations occur and how learners can avoid it or deal with it. Part of this lesson is intended to assist learners in minimising the risk of sexual and gender-based violence. Following on this lesson, learners then examine how unequal power relationships can give rise to abuse. These include exploring common scenarios and how to respond to them. Specific focus is given to sexual harassment and GBV. Against this backdrop, learners also discuss rape as an act of violence, potential steps to reduce the risk of sexual violence, and steps to take if the learner or someone they know is raped. Finally, learners have the opportunity to brainstorm ending GBV. This requires an understanding of the problem which learners will have engaged with over the course of the year.
- **There are only four lessons planned for the Grade 12 year.**
There is one lesson which directly speaks to SRHR, namely 'our needs and our rights, taking action'. Learners discuss SRHR as part of the Bill of Rights. After examining these rights, learners study a related advocacy campaign and have an opportunity to develop their own based on their experience and understanding of sexual and reproductive health.

Shortcomings of CSE Curriculum

01

Although the Life Orientation curriculum is comprehensive and covers a wide range of topics, the various elements of SRHR do not seem to be adequately addressed in line with the policies referred to above.

Life Orientation has also been criticised for being 'promising in theory' but with many 'problems in the practical implementation thereof'.³⁵ Educators have reported not feeling that they have been sufficiently trained. Some learners feel that is a 'waste of time' or that it is not treated with the same seriousness as other subjects by teachers and learners alike.³⁶ Moreover, there has been limited follow-up on the implementation of the curriculum and few longitudinal studies that measure the impact on learners' SRHR outcomes.

02

With the launch of the CSE pilot programme, there has been resistance, by parents and teachers, to certain topics covered. This has been encouraged by the explicit mention of 'sexuality' in the title of the subject. The CSE curriculum, furthermore, does not provide enough time to adequately engage with the lesson content. Each lesson is given an hour, meaning that teachers will have to tackle difficult concepts and conduct the specified exercises in very limited time. This also means that, over the course of the year, only 10 to 15 hours are given to CSE.

03

While there is some inclusion of GBV as a topic in the curriculum, it is not included to a suitable degree given the magnitude of the GBV crisis in the country.

Targeting this issue during the formative years of these individuals is an opportunity to address the wider societal problem. Finally, there is little to no inclusion of the internet and social media and the role these platforms play. Most learners between Grades 4 to 12 will be active online and therefore exposed to the associated risks. Including this topic in the curriculum will assist learners in navigating the internet thereby protecting themselves, in part, against online abuse which is linked to sexual and gender-based violence.

35 A Jacobs 'Life Orientation as experienced by learners: a qualitative study in North-West Province' (2011) 31 South African Journal of Education 212.

36 Ibid at 220.

Recommendations and Conclusion

It is clear from our research that there are many necessary steps for DBE to take to ensure girls are aware of their SRHR. It is of great importance to educate girl learners on SRHR and protection from GBV.

Our research found that the following further steps by DBE should be implemented:

- The national integrated sexual and reproductive health and rights policy should specify how it should be implemented.
- The Pregnancy Policy should be implemented across the institutional, national, provincial, and district level with goals and objectives reviewed every five years
- Learners should also be given comprehensive and scientifically accurate information about HIV, STIs, TB, and pregnancy in a non-judgmental way, including information on contraception, HIV testing, and STI screening and treatment
- Life Orientation curriculum to be expanded to include SRHR
- CSE be rolled out nationally
- CSE curriculum to be allocated more time per lesson plan
- GBV to be included in CSE curriculum
- Content on online and social media risks be included in the CSE curriculum.

Get in Touch



www.lrc.org.za



LRCSouthAfrica



lrcsouthafrica



Legal Resources Centre



LRCSouthAfrica

CAPE TOWN REGIONAL OFFICE

Block D, Ground Floor, Aintree
Office Park
cnr Doncaster & Loch Roads,
Kenilworth,
Cape Town 7708
Tel: +27 21 879 2398
Fax: +27 21 423 0935

DURBAN REGIONAL OFFICE

11th Floor, Aquasky Towers,
275 Anton Lembede Street,
Durban 4001
Tel: +27 31 301 7572
Fax: +27 31 304 2823

GRAHAMSTOWN REGIONAL OFFICE

116 High Street, Grahamstown 6139
Tel: 046 622 9230
Fax: 046 622 3933

JOHANNESBURG REGIONAL OFFICE

2nd Floor West Wing, Women's Jail,
Constitution Hill
11 Kotze Street, Braamfontein,
Johannesburg 2001
Tel: 011 038 9709
Fax: 011 838 4876

